

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE URETHANE ANTITRUST
LITIGATION

Civil Action No.: 2:08-CV-05169 (WJM) (MF)

Document Filed Electronically

**PROPOSED COURT
VOIR DIRE**

Defendant The Dow Chemical Company requests that the following questions be asked of potential jurors during voir dire pursuant to Rule 47(a) of the Federal Rules of Civil Procedure; these questions include those covered by the Court's customary voir dire. Defense Counsel request that follow-up questions to seek explanation for any "Yes" responses to the questions below be handled at sidebar, as appropriate. Defense Counsel also request leave to orally tender supplemental questions as may be necessitated by the answers of prospective jurors in oral voir dire.

I. FAMILIARITY WITH CASE, PARTIES, ATTORNEYS, AND POTENTIAL WITNESSES

1. [After introductions of court staff and attorneys:]

Do you, or someone close to you, know any of the court staff, lawyers, or law firms in this case? Attorneys for Plaintiffs are: Jeffrey M. Johnson, Richard J. Leveridge, James R. Martin, Alex E. Hassid, Daniel P. Schaefer, James E. Cecchi, and Lindsey H. Taylor. Attorneys for Dow are: the law firm Dechert LLP, and attorneys David Bernick, Jonathan Streeter, Carolyn Hazard, William McEnroe, and the law firm Gibbons PC, and attorneys Lawrence Lustberg and Daniel McGrady.

2. The parties in this case are Carpenter Company, Foam Supplies, Inc., Flexible Foam Products, Inc., Hickory Springs Manufacturing Company, Huber Engineered Woods, LLC, J.M. Huber Corporation, Leggett & Platt, Inc., Lubrizol Advanced Materials, Inc., MarChem Corporation, Skypark Manufacturing LLC, Vitafoam Inc., Woodbridge Foam Corporation and The Dow Chemical Company. Do you or anyone close to you have any familiarity, experience, or association with any of the parties in this case, or with the products at issue, which include toluene diisocyanate (“TDI”), methylene diphenyl diisocyanate (“MDI”), and polyether polyols? If yes, please explain.

3. The following people may testify in this case either live or through videotaped deposition: Stephanie Barbour, Rick Beitel, William Bernstein, Michelle Blumberg, James Boehm, Jeffrey Briney, John Bruno, Jorge Burtin, Charles Churet, James Coleman, Gregory Comeaux, Phillip Cook, Martin Cosgrove,

Kenneth (Todd) Councilman, Michael Curti, Paul Davidson, Peter Davies, Patrick Dawson, Jane-Pierre Dhanis, Edward Dineen, Arthur Eberhart, Helen Ebert, Kenneth Elzinga, Thomas Feige, Del Felter, David Fischer, Jerry Fosnaugh, David Fowler, Gregory Geaman, Jeffrey Gomberg, Anthony Hankins, George Harrick, Uwe Hartwig, Nigel Hay, Larry Heppe, Patrick Ho, Franklin Hurst, Stephen Jackson, William Kincaid, Robert Kirk, Kenneth Lane, Thomas Laursen, Robert Lawrence, Wayne LeSage, Marco Levi, William Lizzi, Richard Loftin, William Long, Gerald MacCleary, Wilbur Mann, Tom McCormick, Leslie Marx, Raj Mehta, Richard Mericle, Frank Morgan, Bruce O'Brien, David Pashalidis, Stanley Pauley, Gerald Phelan, John Phelps, Joseph Plati, Christopher Pugh, John Quackenbush, Lynn Schefsky, Don Simpson, Gerard Solini, Ernie Springolo, Lawrence Stern, Mark Talbert, David Underdown, Keith Ugone, Michael Vaughn, Stuart Watson, Alan Weber, David Scott Wheeler, Robert Wood, Sandon Wool, and Joe York.

Do you, or someone close to you, have any experience or association with any of the potential witnesses in this case? If yes, please explain.

4. [Proposed statement of the case:] This case you will hear about involves a claim of price fixing under federal antitrust laws against The Dow Chemical Company. The products involved in this case are chemicals known as TDI, MDI, and polyols, which are used to make certain types of products called “urethanes.” Urethanes, in turn, are used to manufacture products such as foam mattresses, cushions in auto seats, insulation in appliances, and many others. The plaintiffs in this case are eleven companies that purchase TDI, MDI, and polyols to make

urethane products. The defendant is The Dow Chemical Company, which was a manufacturer of TDI, MDI, and polyols during the years involved in this case, which include 1994 through 2003. The plaintiffs contend that, during those years, Dow participated in a price-fixing conspiracy with other manufacturers of TDI, MDI, and polyols. Dow denies participating in any price-fixing conspiracy and instead contends that prices were set through competition.

Prior to arriving in the courtroom today, had you heard or read anything about this case or any case with similar issues? Because of what you have read or heard, have you formed any opinions about this case?

II. INDIVIDUAL BACKGROUND QUESTIONS

(Have each prospective juror, beginning with the first called, stand and answer:)

5. Please state your name, the name of the county in which you live, and the town or city where you live.
6. How long have you lived there?
7. Do you own your place of residence or do you rent?
8. Describe your current job and employer, including whether you're working full-time or part-time.
 - a. If you are not working outside the home, what was your last job and employer, and what do you do now? For example, are you a student (Where do you attend school, and what are you studying?), a homemaker (Have you ever worked outside the home?), retired (If you are retired, what was your last occupation and employer?), disabled (If you worked before you became disabled, what was your last job and employer?), or

currently unemployed and looking for work (If you are looking for work, state the type of work you are seeking.)?

- b. If your current occupation is different than what you've done for the majority of your adult life, what has been your primary occupation?
 - c. How long have you been employed in your present occupation?
9. Are you married or living with a partner?
10. If you are married or living with a partner:
- a. What is his or her current occupation and employer?
 - b. How long has he or she been employed with his or her present employer?
 - c. If not working, what does he or she do now, and what did he or she do before?
11. If you have any children, what are their ages, and what are the occupations of any adult children?
12. Describe the occupations and employers of any other adults living in your household, and explain your relationship to them.
13. If you have any licenses, certificates, or college degrees, please explain, including your major area of study.
14. Have you previously served as a juror?
- a. If yes, how many times and when, if you recall?
 - b. Civil, criminal, or both? What was the type of case? (*e.g.*, contract dispute, personal injury, etc.) Was the trial in state or federal court?
 - c. Were you ever the foreperson?
 - d. Did the jury reach a decision in every case?

- e. Did your experience as a juror affect your view of the justice system? If yes, explain.
- 15. Have you or someone in your family ever been involved in a lawsuit?
 - a. Was it as the plaintiff, the defendant, a witness, or something else?
 - b. What kind of case was it? What were the circumstances?
 - c. When did this occur?
 - d. Were you or he/she deposed?
 - e. Was there a trial?
 - f. What was the outcome of the case? Were you satisfied with the outcome?
 - g. How did this experience affect your opinion of the legal system?
- 16. What social, civic, charitable, industry/trade associations, or other organizations do you belong to?
- 17. Have you ever been a member of a union? If yes, which one(s) and did you hold any leadership role or position in the union? If yes, explain.
- 18. Have you or a family member served in the military? If yes, in which branch and during what years?

III. RELEVANT TRAINING AND EXPERIENCE

- 19. Do you or anyone in your family or any close friend have any training or work experience in accounting or finance? If yes, describe.
- 20. Do you or anyone in your family or any close friend have any training or work experience in contracts? If yes, describe.
- 21. Do you or anyone in your family or any close friend have any training or work experience in the legal field, studying law, or working in any legal field or the

courts? If yes, describe.

IV. LAW AND THE COURTS

22. Have you or anyone close to you ever been an expert or a consultant in a legal case of any kind?
23. Have you or anyone close to you ever had any negative experience with the justice system? [If yes:] Do you believe that any negative feelings you have about the justice system would affect your ability to be a completely fair and impartial juror in this case?

V. BUSINESS AND COMPETITION

24. Have you, your spouse or partner, or a family member ever owned or run a business? If yes, explain:
 - a. Your/their role/title in the company?
 - b. The number of employees?
 - c. Is the business operating today? If not, when did it stop?
 - d. Was the company ever involved in a lawsuit? If yes, explain what happened.
25. Have you, or any family member or any close friend, ever been the victim of any type of unfair business practices, including what you believe was unfair competition or unfair pricing? If yes, please explain?
 - a. Do you think that experience might affect your ability to be a completely fair and impartial juror in this case?
26. Do you hold any views against competitors working in the same industry from talking with each other about prices for products or services? If yes, please

explain.

27. Do you hold any views regarding the need for more regulation of business either by the government or by professional trade associations? If yes, please explain.
28. Do you have any knowledge of the antitrust laws or other laws governing competition, such as the Sherman Antitrust Act? If yes, please explain.
29. Do you believe it is common for companies to set unfair prices or to conspire to set unfair prices?
 - a. [If yes:] Do you think that predisposition might affect your ability to be a completely fair and impartial juror in this case?
30. Do you believe it is common for senior corporate executives to engage in improper business activities?
 - a. [If yes:] Do you think that predisposition might affect your ability to be a completely fair and impartial juror in this case?
31. Are you familiar with the term “price-fixing?” [If yes:] How have you become familiar with the term?
 - a. Please indicate if you have not heard the term “price-fixing” before this case?
32. Have you or any family member or any close friend ever been a victim of what you or they believed was price-fixing or price gouging? If yes, please explain.
 - a. [If yes:] Do you think that experience might affect your ability to be a completely fair and impartial juror in this case?
33. Have you ever formally complained about the price of a product or service? If yes, please explain.

34. Have you ever lost a large amount of money as a result of an unfair price that was set for a product or service? If yes, please explain.
- a. [If yes:] Do you think that experience might affect your ability to be a completely fair and impartial juror in this case?

VI. CHEMICAL COMPANIES AND CORPORATIONS

35. Some of the companies involved in this case are large chemical corporations, like Dow (you'll also hear about Bayer and BASF, etc.). Do you generally have an unfavorable or negative opinion about large chemical companies?
36. Do you generally have an unfavorable or negative opinion about The Dow Chemical Company? [*Request side bar for follow-up questioning.*]
37. Have you or any family member or any close friend ever purchased goods or services from a company involved in the manufacturing, distribution or sale of any chemical products? If yes, please explain, including if you had any issues with the prices for the goods or services.
38. Have you or anyone close to you ever had a bad experience with any kind of chemical or chemical product? If yes, please explain.
39. Do you feel that you might have a bias or predisposition against a large chemical company that is a defendant in a lawsuit for any reason?
40. Do you generally distrust senior corporate executives or large corporations?
- a. [If yes:] Do you think that predisposition might affect your ability to be a completely fair and impartial juror in this case?
41. Do you have any hesitation, even a slight one, that you can give a large corporation a completely fair and unbiased trial? Raise your hand if you have any

bias that could interfere with your ability to be completely fair and impartial to a corporation?

VII. BIAS AND BURDEN OF PROOF

- 42. The Plaintiffs have the burden of proving their case, and the Defendant doesn't have to prove anything. Do think that is unfair to the Plaintiffs that they must prove their claims?
- 43. Do you think that Dow as a Defendant should have to show that it did nothing wrong? If you believe that Dow must have done something wrong because it was sued, now is the time to tell me.
- 44. Dow is here to defend itself in this lawsuit, but the other corporations that have also been accused of participating in a price-fixing conspiracy are not here. Do you have any beliefs that Dow should not defend itself in this case?
- 45. Are you starting out wanting the Plaintiffs to win, before hearing any of the evidence, or if you believe that the Plaintiffs should recover some money in this lawsuit?

VIII. FINAL QUESTIONS

- 46. Did you know or recognize anyone else in the jury pool before coming here today? If so, how do you know each other, and will your relationship affect you if you both end up on the jury?
- 47. If you are selected as juror, will you listen to the views of other jurors and work cooperatively with other jurors in order to reach a verdict?
- 48. Is there anything the Court or the attorneys should know or that makes you doubt that you would be completely fair, impartial, and unbiased in this case? If there is,

it is your duty to tell me at this time.

Respectfully submitted,

GIBBONS P.C.

By: /s/ Lawrence S. Lustberg

Lawrence S. Lustberg, Esq.

Daniel J. McGrady, Esq.

GIBBONS P.C.

One Gateway Center

Newark, New Jersey 07102

Phone: (973) 596-4500

Facsimile: (973) 596-0545

llustberg@gibbonslaw.com

dmcgrady@gibbonslaw.com

David M. Bernick (*admitted pro hac vice*)

Jonathan R. Streeter (*admitted pro hac vice*)

DECHERT LLP

1095 Avenue of the Americas

New York, NY 10036

Telephone: (212) 698-3500

Facsimile: (212) 698-3599

david.bernick@dechert.com

jonathan.streeter@dechert.com

Attorneys for Defendant

The Dow Chemical Company

Dated: February 22, 2016

Juror Number: _____

Print All Answers Neatly in the Spaces Provided.

Answer truthfully.

<p>1. Full Name: _____ First Middle Last</p> <p>2. Gender: <input type="checkbox"/> Female <input type="checkbox"/> Male</p> <p>3. Date of birth: _____ Age: _____</p> <p>4. Other languages you understand (besides English): _____</p> <p>5. City and County where you live, and for how long:</p>	<p>6. Highest level of education you have completed:</p> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Grade _____ <input type="checkbox"/> High school/GED <input type="checkbox"/> Some college classes <input type="checkbox"/> Technical/Vocational </div> <div> <input type="checkbox"/> Associate's degree <input type="checkbox"/> Bachelor's degree <input type="checkbox"/> Master's degree <input type="checkbox"/> Doctorate, M.D. or J.D. </div> </div> <p>Major(s): _____</p> <p>Licenses/certifications: _____</p>
<p>7. Current employment status: (Check all that apply.)</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"><input type="checkbox"/> Employed full-time</div> <div style="width: 33%;"><input type="checkbox"/> Employed part-time</div> <div style="width: 33%;"><input type="checkbox"/> Unemployed</div> <div style="width: 33%;"><input type="checkbox"/> Self-employed</div> <div style="width: 33%;"><input type="checkbox"/> Full-time student</div> <div style="width: 33%;"><input type="checkbox"/> Disabled</div> <div style="width: 33%;"><input type="checkbox"/> Homemaker</div> <div style="width: 33%;"><input type="checkbox"/> Retired since (year: _____)</div> </div>	<p>8. Current marital status: (Check all that apply.)</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> Single, never married</div> <div style="width: 50%;"><input type="checkbox"/> Engaged</div> <div style="width: 50%;"><input type="checkbox"/> Married (____ years)</div> <div style="width: 50%;"><input type="checkbox"/> Partnered (____ years)</div> <div style="width: 50%;"><input type="checkbox"/> Divorced/separated (____ years)</div> <div style="width: 50%;"><input type="checkbox"/> Widowed (____ years)</div> </div>
<p>9. Your current (or, if unemployed or retired, your most recent):</p> <p>Occupation: _____</p> <p>Employer: _____</p> <p>For how long? _____</p>	<p>10. Your spouse's/significant other's current (or most recent):</p> <p>Occupation: _____</p> <p>Employer: _____</p> <p>For how long? _____</p>
<p>11. Have you ever had any prior jury service?</p> <p><input type="checkbox"/> Yes (When? _____) <input type="checkbox"/> No</p> <p><u>If Yes:</u></p> <p>Was that service: <input type="checkbox"/> Civil, ____ times <input type="checkbox"/> Criminal, ____ times</p> <p>Did all of the juries reach a verdict? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Were you ever the foreperson? <input type="checkbox"/> Yes, ____ time(s) <input type="checkbox"/> No</p>	<p>12. Please list any unions or civic, social, religious professional, or trade organizations or associations to which you have belonged in the past 10 years:</p>
<p>13. Do you or a family member or close friend have any training or work experience in any of the following: (Check if applies.)</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> Statistics</div> <div style="width: 50%;"><input type="checkbox"/> Advertising / Marketing</div> <div style="width: 50%;"><input type="checkbox"/> Contracts</div> <div style="width: 50%;"><input type="checkbox"/> Accounting / Finance</div> <div style="width: 50%;"><input type="checkbox"/> Manufacturing</div> <div style="width: 50%;"><input type="checkbox"/> Regulations or Compliance</div> <div style="width: 50%;"><input type="checkbox"/> Law / The courts</div> <div style="width: 50%;"><input type="checkbox"/> Dispute resolution / Mediation</div> <div style="width: 50%;"><input type="checkbox"/> Reviewing or setting prices</div> <div style="width: 50%;"><input type="checkbox"/> Industry or trade associations</div> </div> <p><u>If yes to any</u>, explain:</p>	<p>14. Have you or anyone close to you ever:</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;">a. Sued or filed a claim</div> <div style="width: 50%; text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div> <div style="width: 50%;">b. Been sued</div> <div style="width: 50%; text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div> <div style="width: 50%;">c. Ever been a witness or consultant in a legal matter</div> <div style="width: 50%; text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div> <div style="width: 50%;">d. Been the victim of unfair business practices or pricing</div> <div style="width: 50%; text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div> <div style="width: 50%;">e. Formally complained about the price of a product or service</div> <div style="width: 50%; text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div> <div style="width: 50%;">f. Lost money as a result of being overcharged for a product or service</div> <div style="width: 50%; text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div> </div> <p><u>If yes to any</u>, explain:</p>

<p>15. Do you have any knowledge of antitrust laws or other laws governing competition, such as the Sherman Antitrust Act? <input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>	<p>16. How familiar are you with the term "price-fixing?" <input type="checkbox"/> Very familiar <input type="checkbox"/> Somewhat familiar <input type="checkbox"/> Not very familiar <input type="checkbox"/> Not familiar at all</p>
<p>17. Do you think it is common for senior corporate executives to engage in improper business activities? <input type="checkbox"/> Yes, definitely <input type="checkbox"/> Yes, probably <input type="checkbox"/> No <u>If yes</u>, explain:</p>	<p>18. Do you think it is common for companies to conspire together to set prices for good and/or services? <input type="checkbox"/> Yes, definitely <input type="checkbox"/> Yes, probably <input type="checkbox"/> No <u>If yes</u>, explain:</p>
<p>19. Have you or anyone close ever purchased goods or services from a company involved in the manufacture, distribution, or sale of any chemical products? <input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>	<p>20. In general, what is your opinion about large chemical companies?</p>
<p>21. Do you believe that the Plaintiffs should receive compensation because they brought a lawsuit? <input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>	<p>22. Would you have any bias or leaning against a group of companies that have brought a lawsuit against a chemical corporation? <input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>
<p>23. Would you have any bias or leaning against a large chemical corporation that is a defendant in a lawsuit? <input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>	<p>24. Describe anything not covered by this questionnaire that might affect your ability to be a completely fair and impartial juror:</p>

I swear that all the foregoing is true and correct.

SIGNATURE: _____

DATE: _____

CERTIFICATE OF SERVICE

On February 22, 2016, I caused a copy of the foregoing to be served on all counsel of record via ECF.

/s/ Lawrence S. Lustberg
Lawrence S. Lustberg
GIBBONS P.C.
One Gateway Center
Newark, NJ 07102
Telephone: (973) 596-4500
Facsimile: (973) 596-0545
llustberg@gibbonslaw.com